



U.S. Department of Justice

United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

January 9, 2024

VIA ECF

The Honorable Paul G. Gardephe
United States District Judge
Southern District of New York
40 Foley Square
New York, New York 10007

Re: United States v. William Weiner,
22 Cr. 19 (PGG)

Dear Judge Gardephe:

The Government writes to request the Court to immediately compel the defense to produce materials that they intend to rely on at trial, which have never been produced to the Government in violation of Federal Rule of Criminal Procedure 16(b).

Pursuant to Rule 16(b)(1)(A), if a defendant “requests disclosure under Rule 16(a)(1)(E) and the government complies,” then the defendant must permit the government to inspect any documents in the defendant’s “possession, custody, or control,” which the defendant “intends to use” in his “case-in-chief at trial.” Fed. R. Crim. P. 16(b)(1)(A). When a defendant “avail[s] himself of the strategy to obtain discovery of the government, he must comply with the requirement for reciprocal discovery.” *United States v. Ryan*, 448 F. Supp. 810, 811 (S.D.N.Y. 1978), *aff'd*, 594 F.2d 853 (2d Cir. 1978). To be sure, a defendant “can forgo discovery of the evidence that the government intends to use in its case-in-chief, and thereby avoid being required to disclose the evidence that [he] intends to use in support of [his] defense.” *United States v. Larkin*, No. 12-cr-319, 2015 WL 4415506, at *5 (D. Nev. July 20, 2015). But Rule 16 “does not allow the defendant to have it both ways”—that is, he “cannot obtain the government's evidence without disclosing [his] own evidence” *Id.* at *5.

To date, defense counsel has never made a Rule 16(b) disclosure despite the Government’s requests for reciprocal discovery from the beginning of the case. On January 8, 2024, however, the defense produced a preliminary exhibit list to the Government containing numerous documents that have never been produced to the Government in violation of Rule 16(b) (*See* Ex. A (the “Defense Exhibit List”)). The Defense Exhibit List includes among other things:

- Text messages among Weiner and others that are not in the Government’s possession and were not produced by the Government as part of discovery, (*see* Ex. A at 2, DX 300-302, 305);

- Multiple email exchanges between the defendant and others appearing to contain privileged materials that are not in the Government's possession and were not produced by the Government as part of discovery, (*see id.* at 3, DX 412-219);
- Tax returns for Weiner and Nexray from 2020 and 2021 that are not in the Government's possession and were not produced by the Government as part of discovery, (*see id.* at 4, DR 800-803); and
- MRI reports prepared by multiple physicians that are not in the Government's possession and were not produced by the Government as part of discovery, (*see id.* at 5-6, DX 1300-1303).

Moreover, the Defense Exhibit List appears to contemplate an advice of counsel defense given the presence of exhibits containing privileged communications with attorneys. (*See id.* at 3, DX 418 ("2021.07.26 – "Fwd: privileged, Nexray/MRC"); DX 419 ("Emails with and between Counsel regarding Nexray Contracts")). To the extent that the defendant intends to raise an advice of counsel defense, "the opposing party need not move to compel; instead, the burden is on the 'party who intends to rely at trial on a good faith defense' to 'make a full disclosure during discovery' and the 'failure to do so constitutes a waiver of that defense.'" *United States v. Wells Fargo Bank N.A.*, No. 12-CV-7527 JMF, 2015 WL 3999074, at *1 (S.D.N.Y. June 30, 2015) (quoting *Arista Records LLC v. Lime Grp. LLC*, No. 06-CV-5936 (KMW), 2011 WL 1642434, at *2 (S.D.N.Y. Apr. 20, 2011) (internal quotation marks omitted)).

The defense should have produced these materials months ago. As the Court is aware, the grand jury issued a speaking indictment, the Government produced early 3500 and expert reports over a year ago, and the Government has met with counsel multiple times to discuss the facts of the case. The defense cannot claim that they only recently decided to rely on these materials at trial. The defense's failure to produce Rule 16(b) discovery is gamesmanship and improper.

The Government accordingly requests that the Court immediately compel the defense to produce the materials that they intend to rely on at trial. To the extent the defense intends to introduce excerpts of text communications among Weiner and others, the Government requests that the defense produce the entire thread so that the Government can determine whether material communications have been omitted. Similarly, to the extent the defense intends to introduce particular email communications among Weiner and others, the Government requests that the defense produce all email communications about the same subject matter so that the Government

can determine whether material communications have been omitted.

Respectfully submitted,
DAMIAN WILLIAMS
United States Attorney

By: /s/
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MICHAEL LOCKARD
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Exhibit A

Defendant William Weiner's Exhibit List – January 8, 2024

| 1. CONTRACTS & CORPORATE RECORDS | |
|---|---|
| DX 1 | Nexray Medical Imaging, P.C. (“Nexray”), Certificate of Incorporation |
| DX 2 | Nexray Certificate of Assumed Name |
| DX 3 | Nexray P.O. Box Receipts |
| DX 4 | Letter from USPS to Nexray |
| DX 5 | Nexray MRC Funding Agreement |
| DX 6 | First Amendment to MRC Funding Agreement |
| DX 7 | Nexray Sublease for Howard Beach |
| DX 8 | Nexray MRI License Agreement |
| DX 9 | First Amendment to Sublease Howard Beach |
| DX 10 | MRI Service Support Agreement with Oxford Instruments Healthcare |
| DX 11 | CT Service Support Agreement with Oxford Instruments Healthcare |
| DX 12 | Oxford Instruments Healthcare Purchase Agreement |
| DX 13 | Valley National Bank Loan Documents |
| DX 14 | Nexray Howard Beach Real Estate Attorney Invoice |
| DX 15 | Nexray Engagement Agreements with Russell Friedman Associates |
| DX 16 | Nexray Howard Beach Lease |
| DX 17 | Novarad Service Agreement |
| DX 18 | Konica Minolta Healthcare Americas, Inc. Service Agreement |
| DX 19 | Philips Medical Capital Equipment Financing Agreement |
| DX 20 | Montefiore Participating Provider Agreement |
| DX 21 | Nexray Bronx Construction Advancement Siemens |
| DX 22 | Website Design Agreement and Invoice |
| DX 23 | Newbridge Capital Leasing Agreement |

Defendant William Weiner's Exhibit List – January 8, 2024

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|---------------------------|---|
| DX 24 | Professional Credentials for Dr. William Weiner |
| 100. PLEADINGS | |
| DX 100 | Nexray Medical Imaging v. Medical Reimbursement Consultants, 608566/2022 (Nassau County) —Pleadings |
| DX 101 | Liberty Mutual, et al. v. Nexray, et al., 12-cv-5666 (E.D.N.Y.) —Pleadings |
| DX 102 | Haft Superseding Information |
| 200. PHOTOS | |
| DX 200 | Photos of Nexray Clinic |
| DX 201 | Photos of Condominium |
| 300. TEXT MESSAGES | |
| DX 300 | Moriarty-Weiner Text Excerpts (DOJ Production) |
| DX 301 | Decker-Weiner Text Excerpts (DOJ Production) |
| DX 302 | Patel-Weiner Text Excerpts (DOJ Production) |
| DX 303 | Paleocostas-Moriarty Text Excerpts (DOJ Production) |
| DX 304 | Pierre-Weiner Text Excerpts (DOJ Production) |
| DX 305 | Weiner-Weiner Text Excerpts (DOJ Production) |
| 400/500. EMAILS | |
| DX 400 | 2019.3.14 – “Fwd: Doc 1” |
| DX 401 | 2019.03.15 – “Re: Amendment to Finance Agreement” and attachment “signature page Amended MRC agreement” |
| DX 402 | 2019.11.08 – “(no subject)” and attachment “MSK reports critique” |
| DX 403 | 2019.11.11 – “Re: reports” |
| DX 404 | 2020.01.06 – “Fwd: reports” |
| DX 405 | 2020.01.06 – “Re: reports” |
| DX 406 | 2020.03.04 – “Re: Medical Reimbursement” |
| DX 407 | 2020.03.13 – “Re: reports” |

Defendant William Weiner's Exhibit List – January 8, 2024

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| DX 408 | 2020.06.17 – “Nexray New case” and attachment |
| DX 409 | 2020.09.17 – “Re: reports” |
| DX 410 | 2021.2.10 – “[External Email] – Nexray Coming in for EUO Today” |
| DX 411 | 2021.2.10 – “Re: Cases” |
| DX 412 | 2021.02.23 – “Zoom Call for Soul Radiology” |
| DX 413 | 2021.02.23 – “Re: Zoom Call for Soul Radiology” |
| DX 414 | 2021.02.25 – “Re: Zoom Call for Soul Radiology” |
| DX 415 | 2021.02.25 – “Re: Zoom Call for Soul Radiology” |
| DX 416 | 2021.03.01 – “Meeting via zoom Nexray MRC and respective attorneys” |
| DX 417 | 2021.03.09 – “Fwd:” |
| DX 418 | 2021.07.26 – “Fwd: privileged, Nexray/MRC” |
| DX 419 | Emails with and between Counsel regarding Nexray Contracts |
| 600. GRAND JURY & COURT TRANSCRIPTS | |
| DX 600 | Haft Grand Jury Testimony Excerpts (05.08.2021) |
| DX 601 | Haft Grand Jury Testimony Excerpts (07.06.2021) |
| 700. 3500 MATERIAL | |
| DX 700 | Mark Decker 3500 Material |
| DX 701 | Beena Ghazal 3500 Material |
| DX 702 | Barbara Moriarty 3500 Material |
| DX 703 | Gerald Surya 3500 Material |
| DX 704 | Niyati Trivedi 3500 Material |
| DX 705 | Lynn Rodriguez 3500 Material |
| DX 706 | Albert Haft 3500 Material |
| DX 707 | Anthony Rose 3500 Material |

Defendant William Weiner's Exhibit List – January 8, 2024

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|---|--|
| DX 708 | Manny Cheng 3500 Material |
| DX 709 | Scott Coyne 3500 Material |
| DX 710 | Marlon Lawes 3500 Material |
| DX 711 | Mark Novick 3500 Material |
| DX 712 | Paul Schneeloch 3500 Material |
| DX 713 | Jim Egner 3500 Material |
| DX 714 | Terrell Roquez 3500 Material |
| DX 715 | Joseph Infusino 3500 Material |
| DX 716 | Valerie Catanzaro 3500 Material |
| 800. TAX RECORDS & DOCUMENTS | |
| DX 800 | Weiner 2020 Tax Return |
| DX 801 | Weiner 2021 Tax Return |
| DX 802 | Nexray 2020 Tax Return |
| DX 803 | Nexray 2021 Tax Return |
| 900. BANK RECORDS | |
| DX 900 | Nexray Checking Account Statements |
| DX 901 | Weiner and Nexray Citibank Accounts and Transactions |
| DX 902 | Valley National Bank Account Information |
| DX 903 | Nexray Deposits and Withdrawals |
| DX 904 | Nexray Citibank Checking Account Statements |
| DX 905 | Nexray Paycheck Protection Program Data |
| DX 906 | Nexray Valley National Bank P&L Previous Year Comparison and Transactions by Account |
| DX 907 | Nexray Valley National Bank Account Statements and Check Images |
| 1000. BILLING AND ACCOUNTING RECORDS | |

Defendant William Weiner's Exhibit List – January 8, 2024

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|---------------------------------------|---|
| DX 1000 | Paychex Report (SDNY_01317957-01318322) |
| DX 1001 | Nexray QuickBooks Data |
| DX 1002 | Nexray QuickBooks (A. Haft Version) |
| DX 1003 | Green Bills Billing Analysis |
| 1100. SUMMARY CHARTS | |
| DX 1100 | Weiner Tax Summary |
| DX 1102 | Summary Chart of Financial Data |
| 1200. EXPERT DOCUMENTS | |
| DX 1200 | Expert PowerPoint |
| DX 1201 | Expert PowerPoint |
| DX 1202 | Expert Report (Pukenas) |
| DX 1203 | Expert Report (Zafrin) |
| DX 1204 | Expert Report (Bishop) |
| DX 1205 | The Spine Journal 16 (2016) 42-48 |
| DX 1206 | The Spine Journal 17 (2017) 554-561 |
| DX 1207 | Heuristics and Cognitive Error in Medical Imaging |
| DX 1208 | Errors, discrepancies and underlying bias in radiology with case examples: a pictorial review |
| DX 1209 | Emy's Story – Summit Brain and Spine |
| DX1210 | Annular Disc Tear – StatPearls – NCBI Bookshelf |
| DX1211 | “Alarmingly high” number of interpretive errors and inconsistencies in MRI examinations |
| 1300. MRI REPORTS & IMAGES | |
| DX 1300 | Moriarty MRI Reports |
| DX 1301 | Novick MRI Report |
| DX 1302 | Patel MRI Reports |

Defendant William Weiner's Exhibit List – January 8, 2024

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|---|---|
| DX 1303 | Decker MRI Reports |
| 1400. PUBLIC DOCUMENTS | |
| DX 1400 | Condominium Deed (09.28.2022) |
| DX 1401 | Condominium Deed (12.13.2022) |
| DX 1402 | Assessor Information –Condominium |
| DX 1403 | Condominium Listing |
| 1500. SUBPOENAS & GOV'T CORRESPONDENCE | |
| DX 1500 | 2021.03.15 Nexray Medical Imaging Grand Jury Subpoena |
| DX 1501 | 2021.08.17 Nexray Medical Imaging Grand Jury Subpoena |
| DX 1502 | 2021.08.26 Nexray Medical Imaging Grand Jury Subpoena |
| DX 1503 | 2021.09.02 Nexray Medical Imaging Grand Jury Subpoena |
| DX 1504 | 2021.10.14 Nexray Medical Imaging Grand Jury Subpoena |
| DX 1505 | 2023.12.27 Nexray Medical Imaging Grand Jury Subpoena |
| DX 1506 | Correspondence from Government |